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United States
Circuit Court of Appeals
For the Ninth Circuit.

PACIFIC EMPLOYERS INSURANCE
COMPANY,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Transcript of the Record

Upon Petition to Review an Order of the United States
Board of Tax Appeals.

FILED

MAY 28 1936

PAUL P. O'BRIEN,

CLERK

United States
Circuit Court of Appeals

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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APPEARANCES:

For Petitioner:

F. BRITTON McCONNELL, Esq.,

JOSEPH D. PEELER, Esq.,

WARD LOVELESS, Esq.

For Respondent:

A. L. MURRAY, Esq.

Docket No. 68722

PACIFIC EMPLOYERS INSURANCE CO.,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DOCKET ENTRIES:

Transferred to Mr. Arundell 9/16/35.

1932

Dec. 5—Petition received and filed. Taxpayer notified. (Fee paid).

Dec. 6—Copy of petition served on General Counsel.

1933

Jan. 10—Answer filed by General Counsel.

Jan. 18—Copy of answer served on taxpayer—circuit calendar vicinity of Los Angeles, California.

1934

Mar. 30—Hearing set week of June 4, 1934 at Beverly Hills, California.

Apr. 16—Motion for leave to file an amended petition filed by taxpayer. 5/4/34 copy served.

Apr. 30—Amendment to petition lodged.

May 1—Motion to amend petition granted.

June 20—Hearing had before J. C. Adams, Division 12. Submitted on merits. Appearance of G. Britton McConnell, Esq., filed. Answer to amended petition filed 6/11/34—copy served. Taxpayer's brief due July 20, 1934—respondent's due Aug. 20, 1934.

July 19—Order that motion (telegram) for 5 days extension for brief be granted petitioner, entered.

July 23—Brief filed taxpayer. 7/23/34 copy served.

Aug. 20—Brief filed by General Counsel.

1935

Nov. 19—Opinion rendered—C. R. Arundell, Division 7. Decision will be entered for respondent.

Nov. 21—Decision entered—C. R. Arundell, Division 7.

1936

Feb. 17—Petition for review by U. S. Circuit Court of Appeals (9) with assignments of error filed by taxpayer.

Feb. 17—Proof of service filed. [1*]

*Page numbering appearing at the foot of page of original certified Transcript of Record.

1936

Mar. 23—Praecipe filed.

Mar. 23—Proof of service filed.

Mar. 23—Notice of the appearance of Joseph D. Peeler and Ward Loveless, counsel for taxpayer, filed. [2]

United States Board of Tax Appeals.

Docket No. 68722.

PACIFIC EMPLOYERS INSURANCE
COMPANY,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION.

The above named petitioner petitions for a re-determination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (Bureau of Symbols IT:AR:E-6 JHL-60D) dated October 7, 1932, and as a basis of its proceeding alleges as follows:

(1) The petitioner is a corporation, organized under the laws of California, with principal office at 928 South Figueroa Street, Los Angeles, California.

(2) The notice of deficiency, a copy of which is attached hereto, was mailed to the petitioner on October 7, 1932, as the petitioner believes.

(3) The taxes in controversy are income taxes for the year 1930. The deficiency is \$1,193.45, which amount is in controversy.

(4) The determination of the tax as set forth in said notice of deficiency is based upon the following errors;

(a) In determining the taxable net income of the petitioner for the year 1930 the Commissioner has erroneously understated the net loss for the year 1928, applicable as a deduction against [3] the statutory taxable net gain for the year 1930, to be in amount \$8,601.07;

(b) asserting non-taxable interest and dividends should be eliminated as a deduction in the computation of the net loss for the year 1928; as being

(c) retroactively authoritative under Treasury Decision No. 4309, believed to be promulgated under date of March 7, 1931;

(d) and has omitted from consideration or computation in said loss understatement the costs or losses in the insurance business of the petitioner, for the year 1928, in the amount of \$8,580.41, bills receivable and agency balances not admitted as *as* asset and

(e) the expense of officers' life insurance in amount of \$1,065.00 premium paid.

(5) The facts upon which the petitioner relies are as follows:

(a) In the year 1928 the petitioner removed from its assets, in accord with the practices of the insurance business and the usage and requirement of the insurance department of the State of California, bills receivable and agency balances, essentially bad debts, in the amount of \$8,580.41. These items were contained in the gross income, were removed from the net income and/or of the year in/of the operations of the business of the petitioner for said year. [4]

(b) In the year 1928 the petitioner paid, as an expense of its business operations, premiums for insurance on the life of its officers, in the amount of \$1,065.00. This amount was charged against its business operation income, reducing the surplus of the year.

(c) The petitioner believes the aforementioned items \$8,580.41 and \$1,065.00 are strictly pertinent to and a part of the operations of the petitioner's business for the year 1928; should be considered, computed in determination of the net loss in controversy as forcefully as the non-taxable dividends (6,837.06), municipal bond interest (\$2,111.42) and tax interest (\$47.15) eliminated by the Commissioner; that

(d) non-allowance of these realized losses in business as a deduction causes the pertinent deficiency herein involved to operate as a tax on capital; that

(e) tax exempt income and tax exempt expense peculiar to the insurance business requires like treatment in equity; that

(f) the net loss claimed for the year 1928 (deducted from the net income for the year 1930) should be increased \$1,044.34 and (petitioner accepting the depreciation adjustment as made by the Commissioner) the 1930 income should be increased \$1,344.35, resulting in an additional taxable income for the year 1930 in amount of \$300.01.

(6) Wherefore, the petitioner prays that this Board may [5] hear the proceeding and determine that the deficiency due from the petitioner for the year 1930 should not be in excess of \$36.00.

**PACIFIC EMPLOYERS INSUR-
ANCE COMPANY**

By W. R. KILGORE

President.

By VICTOR MONTGOMERY

Secretary.

928 South Figueroa Street,
Los Angeles, California.

State of California,
County of Los Angeles—ss.

Victor Montgomery, being duly sworn, says that he is the Secretary of the Pacific Employers Insurance Company, the above named petitioner; that he has read the foregoing petition and is familiar with the statements contained therein and the facts stated are true.

VICTOR MONTGOMERY

928 South Figueroa Street,
Los Angeles, California.

Subscribed and sworn to before me this 30th day of November, 1932 A. D.

FANNIE de GAUNA

Notary Public in and for the County of Los Angeles, State of California. [6]

State of California,
County of Los Angeles—ss.

W. R. Kilgore, being duly sworn, says that he is the vice-president of the Pacific Employers Insurance Company, the above named petitioner; that he has read the foregoing petition and is familiar with the statements contained therein and the facts stated are true.

W. R. KILGORE

928 South Figueroa Street,
Los Angeles, California.

Subscribed and sworn to before me this 30th day of November, 1932 A. D.

FANNIE de GAUNA

Notary Public in and for the County of Los Angeles, State of California. [7]

TREASURY DEPARTMENT
Washington

Oct. 7, 1932

Pacific Employers Insurance Co.,
928 South Figueroa Street,
Los Angeles, California.

Sirs:

You are advised that the determination of your tax liability for the year(s) 1930 discloses a deficiency of \$1,193.45, as shown in the statement attached.

In accordance with section 272 of the Revenue Act of 1928, notice is hereby given of the deficiency mentioned. Within sixty days (not counting Sunday as the sixtieth day) from the date of the mailing of this letter, you may petition the United States Board of Tax Appeals for a redetermination of your tax liability.

HOWEVER, IF YOU DO NOT DESIRE TO PETITION, you are requested to execute the inclosed form and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:C:P-7. The signing of this form will expedite the closing of your return(s) by permitting an early assessment of any deficiency and preventing the accumulation of interest charges, since the interest period terminates thirty days after filing the inclosed form, or on the date assessment is made, whichever is earlier; WHEREAS IF

THIS FORM IS NOT FILED, interest will accumulate to the date of assessment of the deficiency.

Respectfully,

DAVID BURNET,

Commissioner.

By J. C. WILMER,

Deputy Commissioner.

Inclosures:

Statement

Form 882

Form 870. [8]

EXHIBIT A.

STATEMENT

IT:AR:E-6

JHL-60D

In re: Pacific Employers Insurance Co.,
928 South Figueroa Street,
Los Angeles, California.

Income Tax Liability

Year—1930.

Income Tax Liability—\$6,042.81.

Income Tax Assessed—\$4,849.36.

Deficiency—\$1,193.45.

The deficiency shown herein is based upon the report dated March 31, 1932, prepared by Revenue Agent G. W. Givan and transmitted to you under date of April 20, 1932, which report is made a part of this letter. [9]

EXHIBIT B.

Revenue Agent G. W. Givan's report, transmitted under date of April 20, 1932, incorporated as part of assessment letter.

Pacific Employer's Insurance Co.

TABLE OF CONTENTS

Preliminary Statement.

Schedule 1 Net Income.

“ 1-A Explanation of Items.

“ 2 Computation of Tax.

PRELIMINARY STATEMENT

The deficiency in tax proposed is due to the adjustment of depreciation in 1930 and the elimination of nontaxable interest and dividends deducted in the computation of the net loss for the year 1928.

The changes have been discussed with Mr. B. H. Dennison, taxpayer's accountant, who does not agree to changes made in the net loss for 1928. He does not agree to the T. D. 4309 which requires the inclusion of nontaxable income in computing a net loss.

Depreciation as recommended is believed to be substantially correct and none has been claimed on exhausted assets.

The indicated net loss of \$136,533.65 for the year 1927 has been applied against the net income of \$123,195.93 for the year 1929. It is rather evident from a casual examination of the retained return for these years that any changes developed for the

years 1927 and 1929 would not be sufficient to absorb any of the 1928 loss which has been applied against the 1930 income. [10]

SCHEDULE 1.

Year ended December 31, 1930.

Net Income.

Net income as disclosed by return	\$40,411.33
As corrected	50,356.75
	<hr/>
Net adjustment	\$ 9,945.42
Unallowable deductions and additional income:	
a. Depreciation overstated	\$1,344.35
b. Net loss year 1928	
overstated	8,601.07
	<hr/>
Net adjustment as above	\$ 9,945.42

SCHEDULE 1-A.

Year ended December 31, 1930.

Explanation of Items.

a. Depreciation recommended	888.70
Depreciation claimed	2,233.05
	<hr/>
Difference	\$1,344.35

Difference is due to change in cost basis and to the elimination of depreciation for prior years deducted in 1930.

Detail of Depreciation Recommended.

Assets		Cost	Rate	Amount
Concrete-frame				
office	1926	\$12,000.00		
	1929	14,290.00		
		<hr/>		
		\$26,290.00	3%	\$788.70
Frame				
rentals	1930	4,000.00	5% 6 mo.	100.00
				<hr/>
Depreciation allowable				\$888.70
				[11]
Brought forward			\$888.70	
Depreciation per return			2,233.05	
			<hr/>	
Excessive depreciation			\$1,344.35	
b. Net loss year 1928 as				
claimed on return				\$92,368.43
Net loss year 1928 as amended				83,767.36
				<hr/>
Difference				\$ 8,601.07

Difference due to the elimination of dividends and nontaxable interest deducted by the taxpayer in computing the net loss for the year 1928. This is in conformity with Treasury Decision 4309—March 7, 1931.

Detail.

Net loss per return 1936	\$228,902.08	
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Less:		
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1927 loss included therein	136,533.65	
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Net loss per return		
---------------------	--	--

item 22(b)	\$ 92,368.43	
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Less:		
-------	--	--

Depreciation on concrete-		
frame building cost		

\$12,000.00		
-------------	--	--

at 3%	\$360.00	
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Federal Stamp		
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taxes paid	34.56	394.56
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		\$92,762.99
--	--	-------------

Plus:		
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Interest Muni-		
cipal bonds		

deducted	\$2,111.42	
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Dividends corpo-		
ration stock		

deducted	6,837.06	
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Interest received		
-------------------	--	--

income tax		
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refund	47.15	8,995.63
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Net loss year 1928		
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as amended	83,767.36	
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Reconciliation Municipal Bond Interests 1930

Interest received 1930	\$3,704.50
Interest accrued 12/31/29	1,360.00

\$5,064.50

Less:

Interest purchased 1930	\$ 324.59	
Interest accrued		
12/31/29	1,945.00	2,269.59

Nontaxable interest as reported \$2,794.91

Schedule 2.

Computation of Tax.

Year ended December 31, 1930.

Net income for taxable year	\$50,356.75
Balance subject to tax	\$50,356.75
Income tax at 12%	\$ 6,042.81
Total tax assessable	\$ 6,042.81
Total previously assessed	4,849.36
	<hr/>
Additional tax to be assessed	\$ 1,193.45

[Endorsed]: U. S. Board of Tax Appeals. Filed
Dec. 5, 1932. [13]

[Title of Court and Cause.]

ANSWER.

The Commissioner of Internal Revenue, by his attorney, General Counsel, Bureau of Internal Revenue, for answer to the petition of the above-named taxpayer, admits and denies as follows:

(1) Admits the allegations contained in paragraph (1) of the petition.

(2) Admits that the notice of deficiency was mailed to petitioner on October 7, 1932.

(3) Admits that the tax in controversy is income tax for the year 1930.

(4) Denies that the respondent erred as alleged in paragraph (4), subparagraphs (a) to (e), inclusive, of the petition.

(5) Denies all the material allegations contained in paragraph (5), subparagraphs (a) to (f), inclusive, of the petition.

(6) Denies generally and specifically each and every allegation contained in the petition not hereinbefore admitted, qualified or denied.

WHEREFORE, it is prayed that the taxpayer's appeal be denied.

(Signed) C. M. CHAREST

General Counsel,

Bureau of Internal Revenue.

Of Counsel:

FRANK A. SURINE,

Special Attorney,

Bureau of Internal Revenue.

[Endorsed]: U. S. Board of Tax Appeals. Filed Jan. 10, 1933. [14]

[Title of Court and Cause.]

AMENDMENT TO PETITION.

Petitioner amends its petition herein as follows:

By adding to Paragraph 4 of the original petition the following subsection:

(f) the Commissioner has erroneously used the difference between the claims filed as of the end of the years 1929 and 1930 in conjunction with the losses paid to establish the liability for the unpaid losses to be deducted for income tax computation.

By adding to Paragraph 5 of the original petition the following subsection:

(g) the computation of the losses to be deducted in accordance with the report filed by deponent with the Insurance Commissioner of the State of California and as provided by the law of the State of California, submitted on the Convention Edition Form were as follows:

[15]

Losses paid in 1930	\$ 872,735.74
Less salvage adjustments	6,934.19
	<hr/>
	865,801.55
Losses unpaid at end of 1930	596,532.85
	<hr/>
	1,462,334.10
Losses unpaid at end of 1929	440,318.52
	<hr/>
Total deductible losses	1,022,015.88
Losses erroneously reported in 1930 Return	882,632.55
	<hr/>
Understatement of losses	\$ 139,383.33
Net income reported in 1930	\$ 40,411.33
Additional losses per above statement	139,383.33
	<hr/>
Create a Statutory Net Loss of	\$ 98,972.00

By taking from Paragraph 6 of the original petition the full sentence thereof; and

By adding to Paragraph 6 of the original petition wherefor the taxpayer petitioner respectfully prays that this Board may hear and determine its appeal.

PACIFIC EMPLOYERS

INSURANCE COMPANY

By W. R. KILGORE

Vice President.

By B. H. DENISON

Assistant Secretary.

928 South Figueroa St.,
Los Angeles, California.

State of California

County of Los Angeles—ss.

B. H. Denison, being duly sworn, says that he is the Assistant Secretary of the Pacific Employers Insurance Company, the above named petitioner; that he has read the foregoing petition and is familiar with the statements contained therein and the facts stated are true.

B. H. DENISON

928 South Figueroa St.,

Los Angeles, California.

Subscribed and sworn to before me this day
of April, 1934, A. D.

FANNIE de GAUNA

Notary Public in and for the County of Los Angeles,
State of California. [16]

State of California

County of Los Angeles—ss.

W. R. Kilgore, being duly sworn, says that he is the Vice President of the Pacific Employers Insurance Company, the above named petitioner; that he has read the foregoing petition and is familiar with the statements contained therein and the facts stated are true.

W. R. KILGORE

928 South Figueroa St.,

Los Angeles, California.

Subscribed and sworn to before me this day
of April, 1934 A. D.

FANNIE de GAUNA

Notary Public in and for the County of Los An-
geles, State of California.

[Endorsed]: U. S. Board of Tax Appeals. Filed
May 1, 1934. [17]

[Title of Court and Cause.]

ANSWER TO AMENDMENT TO PETITION.

Now comes the Commissioner of Internal Reve-
nue, by his attorney, Robert H. Jackson, General
Counsel, Bureau of Internal Revenue, and in an-
swer to the amendment to petition of the above-
named taxpayer, admits and denies as follows:

4.(b) Denies that respondent erred as alleged
in paragraph 4, sub-paragraph (f) of the Amend-
ment to the Petition.

5.(g) For lack of information and knowledge
sufficient to form a belief as to the truth or falsity
of the allegations as contained in sub-paragraph
(g) of paragraph 5 of the amendment to petition,
denies the same.

Denies generally and specifically each and every
allegation contained in the amendment to petition
not hereinbefore admitted, qualified or denied.

WHEREFORE, it is prayed that the Commissioner's determination in all things be approved.

ROBERT H. JACKSON

General Counsel,

Bureau of Internal Revenue.

Of Counsel:

ARTHUR L. MURRAY,

Special Attorney,

Bureau of Internal Revenue.

[Endorsed]: U. S. Board of Tax Appeals. Filed
Jun. 11, 1934. [18]

[Title of Court and Cause.]

STIPULATED STATEMENT OF FACTS.

IT IS STIPULATED, BY AND BETWEEN
THE PARTIES HERETO, by their respective
counsel, the Honorable Board consenting:

I.

Petitioner hereby waives the questions raised by the allegations of subparagraphs (a), (b), (c), (d) and (e) of paragraph 4 of the Petition, leaving for decision only the issue raised by subparagraph (f) of paragraph 4 of the Amendment to Petition.

II.

Petitioner is the type of insurance company which is subject to tax under the provisions of Section 204 of the Revenue Act of 1928.

III.

That the tax in controversy relates solely to the year 1930.

IV.

That if the method of computing taxable income applied by respondent is sustained by the Board, then petitioner will be required to pay a deficiency tax in the amount of \$1,193.45, as set forth in the deficiency letter issued by respondent.

If the method of computing taxable income which your petitioner contends is correct is sustained by the Board, there is an over-payment of petitioner in the amount of \$1,212.24. [19]

V.

That the only items in the computation of taxable income involved in this controversy are two factors necessary to arrive at the amount of a 1930 deduction for losses incurred and consist of unpaid losses at the beginning and at the end of the year 1930.

VI.

That petitioner, Pacific Employers Insurance Company, was incorporated under the laws of the State of California on July 26, 1923, and commenced business under Certificate of Authority issued to it by the Insurance Commissioner of the State of California on October 1, 1923, and is now and at all times since said date has been operating an insurance business under said authority. That said business is confined solely to the State of California, and is regulated solely by the laws of the State of California.

That the principal business written by the petitioner is Workmen's Compensation Insurance and approximately fourteen-fifteenths of the net premium income of petitioner for the year 1930 was from this source. That a large portion of this business is written on a policyholders participating basis. That the balance of the premium income of petitioner was from automobile liability, collision and property damage insurance, principally, and a small volume from public liability and theft insurance.

VII.

That with respect to the year 1930, your petitioner filed its income tax return on Form No. 1120, as required by respondent. That said income tax return shall be deemed to be in evidence herein and the pertinent portions thereof may be referred to by the parties and by the Board in the discussion and consideration of the question presented.

VIII.

That said income tax return on Form No. 1120 contains the following items, to-wit: [20]

"Losses paid		\$865,801.55
End (losses unpaid at end		
of 1930) 1930	\$660,980.00	
End (losses unpaid at end		
of 1929) 1929	644,149.00	16,831.00
	<hr/>	<hr/>
Losses Incurred		\$882,632.55

VIII (a)

That of the total of \$660,980.00, above stated, the sum of \$60,884.00 relates to liability claims, and the

balance of \$600,096.00 relates to compensation claims.

That of the total of \$644,149.00, above stated, the sum of \$41,491.00 relates to liability claims and the balance of \$602,658.00 relates to compensation claims.

That the amount of losses unpaid above stated, which were stated in said form No. 1120, are computed as follows:

The losses unpaid on liability claims are determined from an estimate of the ultimate cost of final adjustment of each outstanding unadjusted claim made by a Claim Examiner, the total being the sum of such estimates on each such claim. That in estimating such liability claims, the Claim Examiner considers the following elements:

- a. The existence of legal liability of the policy holder;
- b. The nature of the injuries;
- c. The amount demanded by the claimant;
- d. The probable cost of compromise settlement;
- e. The estimated amount of judgment if the claim is unsuccessfully defended.

That the losses unpaid on compensation claims are determined from an estimate of the ultimate cost of final adjustment of each outstanding unadjusted claim made by a Claim Examiner, the total being the sum of such estimates on each such claim. That in estimating such compensation claims, the Claim Examiner considers the following elements:

- a. The existence of legal liability of the policy holder.

- b. The nature of the injuries;
- c. The amount of benefits provided under the Workmen's Compensation Insurance and Safety Act of California;
- d. The effect of a particular type of injury upon the injured individual, considering his age, general physical condition and morale; [22]
- e. Estimates of attending physicians (which may be conflicting) as to the duration and effect of disability caused by an injury;
- f. The potential liability in each case of permanent or new and further disability and awards of the Industrial Accident Commission therefor during the continuing jurisdiction of said Commission under Section 20 (d) of the California Statute, for a period of 245 weeks from the date of injury.

The provisions of the Workmen's Compensation Act of California as administered and interpreted by the courts of California. [23]

That the estimates of individual Claim Examiners, with respect to particular claims, sometimes vary considerably.

That such estimates are made at the inception of each claim presented and are revised from time to time.

IX.

That in addition to the income tax return on Form No. 1120, above mentioned, petitioner filed with said Form No. 1120, and attached thereto, a copy of pages 1 to 20, inclusive, of its "Annual Statement for the Year Ending December 31, 1930,

of the Condition and Affairs of the Pacific Employers Insurance Company", of the Form "Miscellaneous Stock Companies—Convention Edition 1930". That said portion of said Annual Statement is from the "Annual Statement Approved by the National Convention of Insurance Commissioners", referred to in subparagraph b (1) of Section 204 of the Revenue Act of 1928.

That said portion of said Annual Statement may be deemed to be a part of the record herein and may be referred to in the consideration of this case. For the purpose of making an exhibit, complete in itself, certified copies of pages 3, 4, 5 and 8 of said portion of said Annual Statement which was submitted with the 1930 return, are filed herewith, in connection with certified copies of pages 24 and 25 of said Annual Statement for the year 1930, as filed with the Insurance Commissioner of the State of California. Said certified copies are marked, respectively, petitioner's exhibits 1, 2, 3, 4, 5 and 6.

That for the purpose of this case all of the statements contained therein are deemed to be correct.

X.

That the items of unpaid losses appearing in said Exhibits, as hereinafter specified, are computed in accordance with the [21] provisions of Section 602 (a) of the Political Code of California. That for convenience, a copy of said statute, certified by counsel to be correct, is attached hereto and may be marked petitioner's Exhibit 7.

That Section 602 (a) of the Political Code of California is the law governing the business of petitioner and the unpaid loss items set forth in said Annual Statement (Exhibit 4) represent the highest Aggregate Reserve, after deduction for reinsurance, called for at the beginning and end of the taxable year by said law of said State of California. That said unpaid losses represent sums which have been actually held by petitioner, as shown by said Annual Statement (Exhibit 4).

XI.

That the amount of unpaid losses as indicated by said Exhibit 4 are as follows:

Losses paid during taxable year 1930,		
plus salvage and reinsurance recoverable outstanding at the end of the preceding taxable year, less salvage and reinsurance recoverable outstanding at the end of the taxable year		\$865,801.55
Unpaid Losses outstanding at the end of 1930	\$596,532.85	
Unpaid losses outstanding at the end of the preceding taxable year	440,318.52	156,214.33
	<hr/>	<hr/>
Losses Incurred		\$1,022,015.88

Respectfully submitted,

F. BRITTON McCONNELL

Counsel for Petitioner.

ROBERT H. JACKSON

Counsel for Respondent.

[Endorsed]: U. S. Board of Tax Appeals. Filed Jun. 20, 1934. [24]

III—DISBURSEMENTS

Amount brought forward, \$

\$

	(1)		(2)		(3)		(4)		(5)		
	Gross amount paid for losses		DEDUCT		Total deduction		Net amount paid policyholders for losses				
	Gross Salvage (Sched. H)		Reinsurance								
1. Accident											
2. Health											
3. Uninsurable accident and health											
4. Auto Liability	79,572	83	150	-	39,330	83	39,480	03	40,092	83	
5. Liability other than auto	1,610	92			2,175	29	2,175	89	566	97	
6. Workmen's compensation	844,549	08	17,823	94	27,615	43	45,239	37	799,110	31	
7. Fidelity											
8. Surety											
9. Plate glass											
10. Burglary and theft	6,330	68	-	-	-	-	-	-	6,330	68	
11. Steam boiler											
12. Machinery											
13. Auto property damage	18,104	53	265	-	868	38	869	40	94,129	93	
14. Auto collision	30,087	07	3,651	17	12,984	83	16,642	00	134,440	7	
15. Property damage and collision other than auto											
16. (a) Other auto	5,452	90	5,452	90			5,452	90	49,194	0	
17. TOTALS	985,707	83	22,150	86	90,789	03	112,972	19	872,735	74	
18. Investigation and adjustment of claims, viz:											
19. Accident	\$	Health	\$	Non-insurable accident and health	\$	Auto liability	\$	12,253	31		
20. Liability other than auto	\$	Workmen's compensation	\$	Fidelity	\$	Surety	\$				
21. Plate glass	\$	Burglary and theft	\$	Steam boiler	\$	Machinery	\$				
22. Auto property damage	\$	Auto collision	\$	Property damage and collision other than auto	\$	(a) Other auto	\$	322	4	146,394	27
23. Policy fees retained by agents											
24. Commissions or brokerage, less amount received on return premiums and reinsurance for the following classes:											
25. Accident	\$	Health	\$	Non-insurable accident and health	\$	Auto liability	\$	8,387	95		
26. Liability other than auto	\$	Workmen's compensation	\$	Fidelity	\$	Surety	\$				
27. Plate glass	\$	Burglary and theft	\$	Steam boiler	\$	Machinery	\$				
28. Auto property damage	\$	Auto collision	\$	Property damage and collision other than auto	\$	(a) Other auto	\$	1,606	13	157,134	56
29. Salaries and all other compensation of officers, directors, trustees and home office employees										50,430	-
30A. Home office travel										28,968	-
30. Salaries, traveling and all other expenses of branch office employees and agents not paid by commissions										27,600	-
31. Medical examiners' fees and salaries											
32. Inspections, including accident prevention										16,700	-
33. Rents, including \$ 6,600 for company's occupancy of its own buildings										10,500	-
34. General office maintenance and expense										3,217	8
35. Repairs and expenses (other than taxes) on real estate										15,476	1
36. Taxes on real estate										2,394	55
37. Taxes, licenses and fees:											
(a) State taxes on premiums										40,885	87
(b) Insurance department										218	21
(c) Other state taxes											
(d) Federal											
(e) All other (except on real estate)											
38. Legal expenses \$ 1,331 46; advertising \$ -; printing and stationery \$ 7,310 19										41,104	08
39. Postage, telegraph, telephone, exchange and express \$ 7,380 -; insurance \$ 1,145 66										86,416	5
40. Furniture and fixtures \$ -; books, newspapers and periodicals \$ -										85,156	4
41. Bureau and Association dues and assessments											
42. Stockholders for dividends (amount declared during the year, cash \$ 24,000 -; stock \$ -)										82,271	5
43. Policyholders for dividends, less \$ - dividends received from reinsuring companies										24,000	-
44. Other disbursements (give items and amounts):											
45. Miscellaneous and Investment Expense										132	26
46. Refunds to Policyholder under matured annual paid contracts										150,632	31
47. Remittances to Home Office from United States Branch (gross)											
48. Borrowed money repaid (gross)											
49. Interest on borrowed money											
50. Agents' balances charged off											
51. Gross loss on sale or maturity of ledger assets, viz:											
(a) Real estate, per Schedule A											
(b) Bonds, per Schedule D										685	80
(c) Stocks, per Schedule D										750	00
52. Gross decrease, by adjustment, in book value of ledger assets, viz:											
(a) Real estate, per Schedule A											
(b) Bonds, per Schedule D											
(c) Stocks, per Schedule D											
53. Total Disbursements										1,532,047	08
54. BALANCE										1,423,345	63



IV—LEDGER ASSETS

1. Book value of real estate (less \$ 75,000 incumbrances), per Schedule A	\$ 51208.80	✓
2. Mortgage loans on real estate per Schedule B, first liens \$ 103,000.00 other than first	103,000.00	✓
3. Loans secured by pledge of bonds, stocks or other collateral, per Schedule C		
4. Book value of bonds, \$ 277,214.00 ; and stocks, \$ 270,478.82 ; per Schedule D	547,692.82	✓
5. Cash in company's office	\$	
6. Deposits in trust companies and banks not on interest, per Schedule N	124,101.83	✓
7. Deposits in trust companies and banks on interest, per Schedule N	124,101.83	✓
8. Gross premiums, less return premiums and reinsurance, in course of collection, viz: (1) On policies or contracts issued on or after October 1 of Current Year (2) On policies or contracts effective prior to October 1 of Current Year		
9. Accident	\$	
10. Health	\$	
11. Non-cancellable accident and health		
12. Auto liability <i>All Lines</i>	81,023.54	5607.56
13. Liability other than auto	311.88	368.62
14. Workmen's compensation	244,885.46	11,892.93
15. Fidelity		
16. Surety		
17. Plate glass		
18. Burglary and theft	3505.30	
19. Steam boiler		
20. Machinery		
21. Auto property damage		
22. Auto collision		
23. Property damage and collision other than auto		
24. (a)		
25. TOTALS	\$ 332,232.68	\$ 17,863.11
26. Bills receivable		350,095.79
27. Other ledger assets, viz: <i>Mortgage Guaranty Certificates</i>	\$ 120,000.00	
28. <i>Building Loan Certificates</i>	131,179.38	
29.		251,179.38
30.		
31. Ledger Assets, as per Balance on page 3		\$ 1,433,348.62

NON-LEDGER ASSETS

32. Interest due, \$ and accrued, \$ on mortgages, per Schedule B	\$ 636.85	
33. Interest due, \$ and accrued, \$ on collateral loans, per Schedule C, Part I		
34. Interest due, \$ and accrued, \$ on bonds, not in default, per Schedule D, Part I	6015.30	
35. Interest due, \$ and accrued, \$ on other assets (give items and amounts):		
36. <i>Mortgage Guaranty Certificates</i>	1100	
37. <i>Building Loan</i>	1420	
38. Rents due, \$ and accrued, \$ on company's property or lease		9172.15
39. Market value of real estate over book value, per Schedule A		1438.56
40. Market value (not including interest in Item 34) of bonds and stocks over book value, per Schedule D		
41. Other non-ledger assets, viz:		
42. <i>Due from Reinsurance Companies</i>	\$ 19,423.50	
43.		19,423.50
44. Gross Assets		\$ 1,476,325.93

DEDUCT ASSETS NOT ADMITTED

45. Company's stock owned, \$; loans on, \$	\$	
46. Supplies, printed matter and stationery		
47. Furniture, fixtures and safes		
48. Gross premiums in course of collection effective prior to October 1 of current year	17,863.11	
49. Bills receivable		
50. Loans on personal security, endorsed or not		
51.		
52. Book value of real estate over market value, per Schedule A	\$	
53. Book value of bonds and stocks over market value, per Schedule D	15,367.18	
54. Book value of other ledger assets over market value, viz:		
55.		
56.		
57.		15,367.18
58. Total Admitted Assets		332,232.68

(a) Enter "Credit," "Live Stock," or "Sprinkler."

332,232.68
1,433,095.54
1,448,098.22

V—LIABILITIES

(1)	(2)	(3)	(4)	(5)	(6)
1. Losses and claims:	Adjusted or in process of adjustment	Reinsured	*Deduct reinsurance per schedule E, column (2)	Net unpaid claims including incurred but not reported	Incurred but not reported
2. Accident					(a)
3. Health					(a)
4. (c) Non-cancellable accident and health					(a)
5. Fidelity					
6. Surety					
7. Plate glass					
8. Burglary and theft					
9. Steam boiler					
10. Machinery					
11. Auto property damage	9789 -		4894 -	4895 -	250 -
12. Auto collision	4409 -		2204 -	2205 -	250 -
13. Property damage and coll. other than auto					
14. (d) <i>Reinsured</i>	690 -			690 -	
15. TOTALS	14,888 -		7098 -	7790 -	500 -
16. Reserve for unpaid liability losses			39,879.10		
and Workmen's Compensation losses			554,363.75		578,242.85
7. Reserve for credit losses on policies expiring in October, November and December of current year, being fifty per cent of \$					
gross premiums received on said policies, less \$					
paid on losses under said policies					
8. Reserve for accrued losses on credit policies in force December 31 of current year, being fifty per cent of \$					
earned premiums on said policies, less \$					
paid on losses under said policies					
9. Total unpaid claims					596,328.5
10. Estimated expenses of investigation and adjustment of unpaid claims:					599,998.5
0. Accident \$; Health \$					
Non-cancellable accident and health \$; Fidelity \$					
2. Surety \$; Plate glass \$					
Burglary and theft \$; Steam boiler \$					
3. Machinery \$; Auto prop. damage \$			300 -	200 -	
Auto collision \$; Property damage and coll. other than auto \$					
(b) \$					500 -
5. Total unearned premiums as shown by recapitulation, page 7					170,963 -
5 1/2 (c) Additional reserve on non-cancellable accident and health policies \$					
less \$					
reserve on policies reinsured					
6. Commission, brokerage and other charges due or to become due to agents or brokers on policies effective on or after October 1 of current year, viz:					
7. Accident \$; Health \$					
Non-cancellable accident and health \$; Auto liability \$					
8. Liability other than auto \$; Workmen's compensation \$	549.68		20,693.04		
Fidelity \$; Surety \$					
9. Plate glass \$; Burglary and theft \$					
Steam boiler \$; Machinery \$					
10. <i>Auto prop. damage</i> \$; Auto collision \$	21,876.36				
Property damage and coll. other than auto \$; (b) \$					43,118.08
11. Salaries, rents, expenses, bills, accounts, fees, etc., due or accrued					
12. Estimated amount hereafter payable for federal, state and other taxes based upon the business of the year of this statement					291,979.0
13. Dividends declared and unpaid to stockholders, \$					
to policyholders, \$					
14. Due and to become due for borrowed money					
15. Interest due or accrued					
16. Other liabilities, viz:					
<i>Re-insurance payable</i>					28,802.31
<i>Refunds to policyholders on matured annual participating contracts</i>					20,791.35
41.					
42.					
43.					
44.					
45. Total amount of all liabilities, except capital					44,595.66
46. Capital paid up					200,000.00
47. Surplus over all liabilities					23,385.36
48. Surplus as regards policyholders					533,610.4
49. Total					1,493,016.31
(a) Enter "Credit (on policies expiring prior to October of current year)," "Live Stock," or "Sprinkler."					
(b) Enter "Credit," "Live Stock," or "Sprinkler."					
(c) State reserve basis and describe methods used.					
(d) Including \$ for present value of life indemnity claims.					

UNDERWRITING AND INVESTMENT EXHIBIT

Showing the Sources of the Increase and Decrease in Surplus During the Year

UNDERWRITING EXHIBIT

GAIN IN SURPLUS

LOSS IN SURPLUS

PREMIUMS

1. Total premiums, per item 20, page 2	1598,789.27
2. Add unearned premiums and additional reserve December 31 of previous year, per item 8 of last year's exhibit	178644.32
3. Total	1777433.59
4. Deduct unearned premiums and additional reserve Dec. 31 of current year, per items 25 and 25½ page 6	170936.00
5. Premiums earned during the year	166470.59

LOSSES

6. Losses paid, per item 17, page 3	872735.74
7. Add salvage and reinsurance recoverable December 31 of previous year, per item 13 of last year's exhibit	124893.1
8. Total	885222.505
9. Deduct salvage and reinsurance recoverable December 31 of current year, per items (a) <u>iv</u> page 4	19423.50
10. Balance	865801.55
11. Add unpaid losses December 31 of current year, per item 19, page 5	146132.22
12. Total	1011933.77
13. Deduct unpaid losses December 31 of previous year, per item 15 of last year's exhibit	146132.22
14. Losses incurred during the year	440318.52

1011933.77
1022905.88

UNDERWRITING EXPENSES

15. (c) Underwriting expenses paid during the year, per disbursement exhibit, page 3	479168.81
16. (a) Add underwriting expenses unpaid December 31 of current year, per liabilities exhibit, page 5, viz:	131558.29
17. Total	610727.10
18. Deduct underwriting expenses unpaid December 31 of previous year, per item 20 of last year's exhibit	121127.80
19. Underwriting expenses incurred during the year	489599.30
20. Underwriting losses and expenses	151161.18
21. (b) <u>Gain</u> from underwriting during the year	152205.12
	446544.18
	148544.18

UNDERWRITING PROFIT AND LOSS ITEMS

22. Gain from:	
23. Inspections, per item 21, page 3	
24. Agents' balances previously charged off, per item 57, page 2	281.21
25. Other underwriting income, per income exhibit, page 2(a)	-
26. Total	281.21
27. Loss from:	
28. Agents' balances charged off, per item 50, page 3	
29. Other underwriting disbursements, per disbursement exhibit, page 3, other than losses and expenses, per items 6 and 15 of this exhibit (a) <u>44 pages less disbursements, expenses, etc.</u>	137878.66
30. Total	137878.66
31. (b) <u>Loss</u> from items 22 to 30	137597.45
32. Bills receivable and premiums in course of collection not admitted December 31 of previous year, per item 37 of last year's exhibit	83122.22
33. Bills receivable and premiums in course of collection not admitted December 31 of current year, per items 45 and 46, page 4	81726.31
34. (b) <u>Loss</u> from items 32 and 33	4039.27
35. (b) <u>Loss</u> from profit and loss items	141636.72
36. (b) <u>Loss</u> from underwriting and profit and loss items during the year (Carried forward)	16781.31

(a) Give statement number of each item or portion thereof included herein.

(b) Write "Gain" or "Loss".

(c) In order to secure uniformity in the reports of the various companies, all companies are directed to include in this item all disbursements, except payments to policyholders, per item 17, page 2; agents' balances charged off, in item 50, page 3; repairs, expenses and taxes on real estate, such other taxes and fees as apply to investments and personal property, etc. It is to be understood that the total of said items as investment expenses one-eighth of one per cent. of the mean invested assets, viz: Real estate owned, mortgage loans, collateral loans and stocks and bonds owned.



Wills Bros Co
(Type or stamp name of Company)

(This is along name of Company)

_____ (Type or stamp name of Company)

_____ (Type or stamp name of Company)

_____ (Type or stamp name of Company)

_____ (Type or stamp name of Company)

_____ (Type or stamp name of Company)

_____ (Type or stamp name of Company)

_____ (Type or stamp name of Company)

[Title of Court and Cause.]

Docket No. 68722. Promulgated November 19, 1935.

As the Revenue Act of 1928 does not allow deductions for reserves to insurance companies other than life or mutual, a company writing workmen's compensation and liability insurance may not take as a deduction for "unpaid losses" a reserve based on the amount of premiums. The deduction allowable is the amount computed as its probable liability on claims filed.

F. Britton McConnell, Esq., for the petitioner.

Arthur L. Murray, Esq., for the respondent.

OPINION.

ARUNDELL: The respondent determined a deficiency in petitioner's income tax for the year 1930 in the amount of \$1,193.45. Upon waiver by petitioner of several alleged errors there is presented but one issue for decision, namely, the amount allowable as a deduction for "losses incurred" within the meaning of section 204(b) (6) of the Revenue Act of 1928. The parties have stipulated that, if the method of computing the amount allowable now advocated by petitioner is proper, there is an overpayment of \$1,212.24, otherwise the deficiency determined by the respondent is correct.

The facts were stipulated and we incorporate the written stipulation by reference as our findings of fact.

The petitioner is an insurance company other than a life or mutual company. It is a California corporation, its business is confined solely to the State of California, and is regulated by the laws of that state. It operates under a certificate of authority issued by the Insurance Commissioner of California. Its principal business is the writing of workmen's compensation insurance and approximately fourteen fifteenths of its net premium income was from this source in 1930. The balance of the premium income was from automobile liability, collision and property damage insurance, principally, and a small part from public liability and theft insurance. [31]

In petitioner's income tax return for 1930 it claimed a deduction for losses incurred in the amount of \$882,632.55 computed as follows:

Losses paid	\$865,801.55
Unpaid losses end of	
1930	\$660,980
Unpaid losses end of	
1929	644,149
	<hr/>
	16,831.00
	<hr/>
Losses incurred	\$882,632.55

The amounts of the unpaid losses as set out above were determined from estimates of the ultimate cost of final adjustment of each outstanding claim made by claims examiners, the total being the sum of the estimates on each claim. In making their esti-

mates the claims examiners took into consideration a number of elements which might affect the ultimate cost of adjustment.

Petitioner filed with its 1930 income tax return a portion of its "Annual Statement for the Year Ending December 31, 1930, of the Condition and Affairs of the Pacific Employers Insurance Company" as shown on form "Miscellaneous Stock Companies—Convention Edition 1930." The portion of the statement so filed is from the "Annual Statement Approved by the National Convention of Insurance Commissioners" referred to in section 204(b) (1) of the Revenue Act of 1928. The annual statement so filed contains in the list of "Liabilities" an item designated "Reserve for accrued losses * * * \$596,532.85." It also contains in the "Underwriting and Investment Exhibit" the following:

Losses paid	\$865,801.55
Add unpaid losses December 31 of current year	596,532.85

Total	1,462,334.40
Deduct unpaid losses December 31 of previous year	440,318.52

Losses incurred during the year	1,022,015.88
------------------------------------	--------------

The petitioner also filed the aforesaid annual statement with the Insurance Commissioner of California. The statement so filed contains an item

of \$33,879.10 designated "Total reserve for unpaid liability losses", and also an item of \$554,363.75 designated "Total reserve for unpaid compensation losses." These two items total \$588,242.85. Adding to this an item of \$8,290 listed "Total net unpaid claims except liability and workmen's compensation" gives the figure of \$596,532.85.

The items designated unpaid losses in the annual statement are computed in accordance with the laws of California (sec. 602(a), Political Code) and represent the highest aggregate reserve, after deduction for reinsurance, called for at the beginning and end of the year by the California law. The unpaid losses in the above [32] amounts represent sums which have been actually held by the petitioner.

The petitioner now claims as a deduction for "losses incurred" the amount of \$1,022,015.88, computed as above set out, in place of the \$882,632.55 claimed in its return. In both computations the item of "losses paid" is the same, \$865,801.55. The difference between the parties is as to the amount of "unpaid losses" to be taken into consideration in determining the amount of "losses incurred" within the meaning of the statute.

Section 204 (b) of the Revenue Act of 1928 provides for the inclusion in gross income of investment and underwriting income "computed on the basis of the underwriting and investment exhibit of the annual statement approved by the National Convention of Insurance Commissioners * * *."

Among the deductions allowable in determining net income is that for losses, to be computed as follows (sec. 204 (b) (6)):

To losses paid during the taxable year, * * * add all unpaid losses outstanding at the end of the taxable year and deduct unpaid losses outstanding at the end of the preceding taxable year * * *.

The statutory provision for the use of the underwriting and investment exhibit is limited to the determination of gross income and does not follow through to the determination of net income. While the respondent has provided in article 992 of Regulations 74 that the "exhibit is presumed clearly to reflect true net income", he has in the same sentence limited the scope of that presumption by stating that the exhibit will be recognized and used as a basis "in so far as it is not inconsistent with the provisions of the Act." Further, "All items of the exhibit, however, do not reflect an insurance company's income as defined in the Act." The proper use of the exhibit in determining income is that of a guide and not a limitation on the application of the statute. *American Title Co.*, 29 B. T. A. 479; *affd.*, 76 Fed. (2d) 332.

In the case of ordinary corporations and of life insurance companies and mutual insurance companies other than life, the taxing statute makes provision for deduction of certain reserves in computing net income. No such provision is contained

in the provisions relating to insurance companies other than life or mutual. Consequently, companies in the latter classification, as this petitioner is, are not entitled to deduct reserves even though they may be required by state law. American Title Co., *supra*.

The deduction now sought by the petitioner is a deduction for a reserve. While the figure of \$596,532.85 now claimed to be unpaid losses at the end of 1930 is so listed in the underwriting and invest- [33] ment exhibit, the supporting schedules, as above pointed out, clearly show that the figures making up this sum are reserves. The details of the supporting schedules show that the starting point in the computation of the amounts making up the \$596,532.85 is a percentage of earned premiums. In the schedule of computation of "Reserve for unpaid liability losses" the calculation is based on "60% of earned premiums", and in the "Reserve for unpaid workmen's compensation" there is used "70% of earned premiums." Some of the figures for 1929 are given, but not the final result, and from those given it appears that the calculation for that year was made in the same way. Thus the amount now claimed by the petitioner appears to be essentially a reserve, which is not available to this type of insurance company as a deduction in computing net income.

The amount claimed in the return filed by the petitioner and allowed by the respondent was the result of a careful calculation based on the claims

filed with it. An examiner investigated each claim, took into consideration a number of factors, listed in the stipulation, which might affect the amount of petitioner's liability and arrived at a sum that in his opinion the petitioner would be required to pay. These sums were totaled and the totals were listed by petitioner as the "unpaid losses" and approved by the respondent. In a case analogous on the facts, but arising under the different statutory provisions of the Revenue Act of 1918, deductions for losses calculated as in this case were allowed as "accrued but unpaid losses." *Ocean Accident & Guarantee Corporation, Ltd. v. Commissioner*, 47 Fed. (2d) 582.

We conclude that the method used by petitioner in reporting unpaid losses in its return was proper and that the method now advanced by it is not in accordance with the statute. The respondent's determination is affirmed.

Decision will be entered for the respondent. [34]

United States Board of Tax Appeals.
Washington.

Docket No. 68722.

PACIFIC EMPLOYERS INSURANCE
COMPANY,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION.

Pursuant to the determination of the Board, as set forth in its report promulgated November 19, 1935, it is

ORDERED and DECIDED: That there is a deficiency in income tax for the year 1930 in the amount of \$1,193.45.

[Seal]

(s) C. R. ARUNDELL,
Member.

Entered: Nov. 21, 1935. [35]

[Title of Court and Cause.]

PETITION FOR REVIEW OF DECISION BY
THE UNITED STATES BOARD OF TAX
APPEALS.

To the Honorable, the Judges of the United States
Circuit Court of Appeals for the Ninth Circuit:
Your petitioner, Pacific Employers Insurance

Company, in support of this, its petition, filed in pursuance of the provisions of Section 1001(a) of the Act of Congress approved February 26, 1926, entitled the Revenue Act of 1926, as amended, for the review of the decision of the United States Board of Tax Appeals promulgated November 19, 1935, and its judgment entered on November 21, 1935, in the case of Pacific Employers Insurance Company, Petitioner, vs. Commissioner of Internal Revenue, Respondent, Number 68722, under Docket of said Board, wherein the Board determined a deficiency of income tax against this petitioner for the calendar year 1930 in the amount of \$1,193.45, respectfully shows this Honorable Court as follows:

I.

Statement of the Nature of the Controversy.

1. The petitioner is a corporation duly organized and existing under and by virtue of the laws of the State of [36] California, with its principal office in Los Angeles, California. It operates under a certificate of authority issued by the Insurance Commissioner of California and its business consists principally of the writing of workmen's compensation insurance, together with small amounts of automobile liability, collision, property damage, public liability and theft insurance.

2. On October 7, 1932, the Commissioner of Internal Revenue, in accordance with Section 272 of The Revenue Act of 1928, addressed a letter to the petitioner proposing a deficiency of \$1,193.45

for the calendar year 1930. Thereafter, and within the period prescribed by law, petitioner filed with the United States Board of Tax Appeals a petition requesting a redetermination of said deficiency, and said petition was duly docketed under Docket No. 68722; thereafter, petitioner filed an amendment to said petition. The Commissioner of Internal Revenue filed answers in accordance with law by which were raised the issues determined by said decision of the United States Board of Tax Appeals.

3. The sole issue remaining in controversy at the hearing of this cause before the Board arose out of the following facts:

a) Petitioner is an insurance company "other than life or mutual", as described in Section 204, Revenue Act of 1928, and its income taxes for the year in question, 1930, are to be determined under the provisions of said section.

b) On its income tax return for said taxable year, 1930, petitioner claimed a deduction for [37] losses incurred in the amount of \$882,632.55, computed as follows:

Losses paid	\$865,801.55
Unpaid losses end of 1930	\$660,980
Unpaid losses end of 1929	644,149 16,831.00
	<hr/>
	\$882,632.55

The amounts of the unpaid losses as set forth above were determined from estimates of the ultimate cost of final adjustment of each out-

standing claim made by claims examiners, the total being the sum of the estimates on each claim. In making their estimates the claims examiners took into consideration a number of elements which might affect the ultimate cost of adjustment. Said amount of \$882,632.55 was allowed as a deduction by respondent. Said return was filed by petitioner with the Collector of Internal Revenue, Los Angeles, California.

c) Petitioner filed with its 1930 return a portion of its "Annual Statement for the Year Ending December 31, 1930, of the Condition and Affairs of the Pacific Employers Insurance Company" as shown on form "Miscellaneous Stock Companies—Convention Edition 1930". The portion of the statement so filed is from the "Annual Statement Approved by the National Convention of Insurance Commissioners" referred to in section 204(b) (1) of the Revenue Act of 1928. Said statement contains in the list of "Liabilities" an item designated "Total Unpaid [38] Claims \$596,532.85". It also contains in the "Underwriting and Investment Exhibit" the following:

Losses paid	\$865,801.55
Add unpaid losses December 31 of current year	596,532.85
Total	<hr/> \$1,462,334.40
Deduct unpaid losses December 31 of previous year	440,318.52
Losses incurred during the year	<hr/> \$1,022,015.88

The items designated "unpaid losses" in the annual statement were computed in accordance with the laws of California (sec. 602(a), Political Code) and represent the highest aggregate reserve, after deduction for reinsurance, called for at the beginning and end of the year by the California law. The unpaid losses in the above amounts represent sums which have been actually held by the petitioner.

d) Petitioner claims that it is entitled to the deduction for "losses incurred", as described in Section 204(b) (4) and (6), Revenue Act of 1928, the amount of \$1,022,015.88, as computed above, in place of the \$882,632.55 claimed on its return and allowed by respondent.

3. The Board by its opinion promulgated November 19, 1935, and by its order entered November 21, 1935, has rendered a decision approving the respondent's determination and finding a deficiency of \$1,193.45 due from this petitioner for the taxable year 1930. [39]

II.

Determination of Court of Review.

The petitioner, being aggrieved by the said findings of fact, opinion, decision and order, and having filed its 1930 income tax return with the Collector of Internal Revenue at Los Angeles, California, within the Ninth Circuit, desires a review thereof by the United States Circuit Court of Appeals for the Ninth Circuit within which Cir-

cuit is located the office of said Collector of Internal Revenue with whom petitioner filed its income tax return for 1930, the taxable year involved herein.

III.

Assignment of Errors.

The petitioner, as a basis for review, makes the following assignments of error:

1. The Board erred as a matter of law in ordering and deciding that there was a deficiency for the year 1930.

2. The Board erred as a matter of law in failing and refusing to determine that petitioner had made an overpayment of \$1,212.24 for the year 1930.

3. The Board erred in its decision and determination as a conclusion of law that petitioner was not entitled to a deduction of \$1,022,015.88 for "losses incurred" during said year 1930, as defined in Section 204(b), Revenue Act of 1928.

4. The Board erred in its decision and [40] determination as a conclusion of law that the "unpaid losses" of petitioner outstanding at the end of the preceding taxable year (1929) as defined in Section 204(b), Revenue Act of 1928, was not \$440,318.52.

5. The Board erred in its decision and determination as a conclusion of law that the "unpaid losses" of petitioner outstanding at the end of the taxable year 1930, as defined in Section 204(b), Revenue Act of 1928, was not \$596,532.85.

6. The Board erred as a matter of law in its determination that the "losses incurred", as designated in Section 204(b) (4) and (6), Revenue Act of 1928, were not to be "computed on the basis of the underwriting and investment exhibit of the annual statement approved by the National Convention of Insurance Commissioners", as expressly provided in Section 204(b) (1), Revenue Act of 1928.

7. The Board erred in rendering decision for the respondent.

8. The Board erred in not rendering decision for the petitioner.

WHEREFORE, Your petitioner prays that this Honorable Court may review said findings, decision, opinion and order, and reverse and set aside the same; that it direct the United States Board of Tax Appeals to determine that no deficiency is due by the petitioner in this proceeding, and that the petitioner had made an overpayment of \$1,212.24; and for such other and further relief [41] as the Court may deem meet and proper in the premises.

F. BRITTON McCONNELL

340 Roosevelt Building,

Los Angeles, California.

JOSEPH D. PEELER

819 Title Insurance Building,

Los Angeles, California.

WARD LOVELESS

920 Southern Building,

Washington, D. C.

Attorneys for Petitioner [42]

State of California,
County of Los Angeles.—ss.

F. BRITTON McCONNELL, being first duly sworn, deposes and says that he is an attorney of record for the petitioner in the foregoing cause; that as such attorney he is authorized to verify the foregoing petition for review; that he has read the said petition and is familiar with the statements contained therein; and that the statements made are true to the best of his knowledge, information and belief; and that said petition is filed in good faith.

F. BRITTON McCONNELL

Subscribed and sworn to before me this 13th day of February, 1936.

[Seal]

CHRISTENE COPELAND

Notary Public in and for the County
of Los Angeles, State of California.

[Endorsed]: U. S. Board of Tax Appeals. Filed
Feb. 17, 1936. [43]

[Title of Court and Cause.]

NOTICE OF FILING PETITION FOR
REVIEW.

To: Herman Oliphant, Esq.,
General Counsel for the
Department of the Treasury,
Washington, D. C.

Sir:

Please take notice that the petitioner on the 17th day of February, 1936, filed with the Clerk of the

United States Board of Tax Appeals at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Ninth Circuit of the decision by the Board rendered in the above-entitled cause. A copy of the petition for review and the assignments of error as filed is hereto attached and served upon you. Dated at Washington, D. C. this 17th day of February, 1936.

Respectfully,

WARD LOVELESS

920 Southern Building,

Washington, D. C.

Attorney for Petitioner. [44]

Personal service of the foregoing notice, together with a copy of the petition for review and assignments of errors mentioned therein, is hereby acknowledged this 17th day of February, 1936.

HERMAN OLIPHANT

General Counsel for the

Department of the Treasury.

Attorney for Respondent.

[Endorsed]: U. S. Board of Tax Appeals. Filed Feb. 17, 1936. [45]

[Title of Court and Cause.]

PRAECIPE FOR RECORD.

To the Clerk of the United States Board of Tax Appeals:

You will please prepare and transmit to the Clerk of the United States Circuit Court of Appeals for

the Ninth Circuit, certified copies of the following documents:

1. The docket entries of proceedings before the United States Board of Tax Appeals in the above entitled case.

2. Pleadings before the United States Board of Tax Appeals, as follows:

a) Petition.

b) Answer to petition.

c) Amendment to petition.

d) Answer to amendment to petition.

3. Agreed statement of facts, including exhibits 1 to 6, inclusive, made a part of the agreed statement.

4. The opinion of the Board of Tax Appeals.

5. The decision of the Board.

6. The petition for review, together with proof of service of notice of filing petition for review and of service [46] of a copy of the petition for review.

7. This praecipe, together with proof of service of notice of filing praecipe and of service of a copy of praecipe.

The foregoing to be prepared, certified and transmitted as required by law and the rules of the United States Circuit Court of Appeals for the Ninth Circuit.

JOSEPH D. PEELER

Attorney for Petitioner.

[Endorsed]: U. S. Board of Tax Appeals. Filed March 23, 1936. [47]

[Title of Court and Cause.]

NOTICE OF FILING PRAECIPE FOR
RECORD.

To: Commissioner of Internal Revenue,
Washington, D. C.
Arthur H. Kent, Assistant General Counsel,
Washington, D. C.

You are hereby notified that the Pacific Employers Insurance Company, petitioner herein, did, on the 23rd day of March, 1936, file with the Clerk of the United States Board of Tax Appeals at Washington, D. C., a Praecipe for Record. A copy of this praecipe as filed is hereto attached and served upon you.

Dated this 23rd day of March, 1935.

(s) JOSEPH D. PEELER

Attorney for Petitioner.

Personal service of the above and foregoing notice, together with a copy of praecipe for record, is hereby acknowledged this 23rd day of March, 1936.

HERMAN OLIPHANT

General Counsel for the
Department of the Treasury.

[Endorsed]: U. S. Board of Tax Appeals. Filed
March 23, 1936. [48]

[Title of Court and Cause.]

CERTIFICATE.

I, B. D. Gamble, clerk of the U. S. Board of Tax Appeals, do hereby certify that the foregoing pages, 1 to 48, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praeceptum in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of the United States Board of Tax Appeals, at Washington, in the District of Columbia, this 2nd day of April, 1936.

[Seal]

B. D. GAMBLE

Clerk

United States Board of Tax Appeals.

[Endorsed]: No. 8166. United States Circuit Court of Appeals for the Ninth Circuit. Pacific Employers Insurance Company, Petitioner, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record. Upon Petition to Review an Order of the United States Board of Tax Appeals.

Filed April 8, 1936.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

